
By: **Delegate Stern**

Introduced and read first time: February 13, 2004

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Telecommunications Services - Competition - Enforcement**

3 FOR the purpose of authorizing the Public Service Commission to institute a
4 proceeding to evaluate whether to return a telephone company to rate of return
5 regulation under certain circumstances; prohibiting a telecommunications
6 carrier from knowingly impeding the development of competition in a
7 telecommunications service market; establishing certain activities as
8 impediments per se to competition; requiring a telephone company to comply
9 with certain requirements; authorizing the Commission to impose a certain
10 administrative penalty against certain persons under certain circumstances;
11 providing for the assessment and collection of certain damages in certain
12 manners; authorizing injunctive and other relief under certain circumstances;
13 and generally relating to competition and enforcement in telecommunications
14 services.

15 BY repealing and reenacting, with amendments,
16 Article - Public Utility Companies
17 Section 4-301
18 Annotated Code of Maryland
19 (1998 Volume and 2003 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article - Public Utility Companies
22 Section 8-501
23 Annotated Code of Maryland
24 (1998 Volume and 2003 Supplement)

25 BY adding to
26 Article - Public Utility Companies
27 Section 8-502 through 8-504
28 Annotated Code of Maryland
29 (1998 Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Public Utility Companies**

4 4-301.

5 (a) Notwithstanding § 4-101 of this title or any other law to the contrary, the
6 Commission may regulate a telephone company through alternative forms of
7 regulation.

8 (b) The Commission may adopt an alternative form of regulation under this
9 section if the Commission finds, after notice and hearing, that the alternative form of
10 regulation:

11 (1) protects consumers by, at a minimum:

12 (i) producing affordable and reasonably priced basic local exchange
13 service, as defined by the Commission; and

14 (ii) ensuring the quality, availability, and reliability of
15 telecommunications services throughout the State;

16 (2) encourages the development of competition; and

17 (3) is in the public interest.

18 (C) IF THE COMMISSION FINDS THAT A TELEPHONE COMPANY UNDER PRICE
19 CAP REGULATION HAS VIOLATED § 8-502 OF THIS ARTICLE, THE COMMISSION MAY
20 INSTITUTE A PROCEEDING TO EVALUATE WHETHER THE VIOLATION WARRANTS A
21 RETURN OF THE COMPANY TO PRICE AND REVENUE CONTROLS USING RATE OF
22 RETURN REGULATION.

23 [(c)] (D) An alternative form of regulation may include:

24 (1) price regulation;

25 (2) revenue regulation;

26 (3) ranges of authorized return;

27 (4) rate of return;

28 (5) categories of services; or

29 (6) price indexing.

1 8-501.

2 (a) The Commission may, after notice and public hearing, adopt policies and
3 regulations governing the development of competition in the telecommunications
4 services market.

5 (b) Policies and regulations adopted by the Commission under this section
6 shall be consistent with federal law, policies and regulations of the Federal
7 Communications Commission, Title 4 of this article, and any other applicable
8 provisions of Maryland law.

9 8-502.

10 (A) A TELECOMMUNICATIONS CARRIER MAY NOT KNOWINGLY IMPEDE THE
11 DEVELOPMENT OF COMPETITION IN A TELECOMMUNICATIONS SERVICE MARKET.

12 (B) THE FOLLOWING ACTIVITIES ARE IMPEDIMENTS PER SE TO THE
13 DEVELOPMENT OF COMPETITION:

14 (1) UNREASONABLY REFUSING OR DELAYING INTERCONNECTIONS,
15 COLLOCATION, ACCESS TO NETWORK ELEMENTS, OR ACCESS TO THE NETWORK
16 ELEMENTS PLATFORM, OR PROVIDING INFERIOR CONNECTIONS TO ANOTHER
17 TELECOMMUNICATIONS CARRIER;

18 (2) UNREASONABLY IMPAIRING THE SPEED, QUALITY, OR EFFICIENCY
19 OF SERVICES USED BY ANOTHER TELECOMMUNICATIONS CARRIER;

20 (3) EXCEPT FOR PROPRIETARY INFORMATION THAT IS SUBJECT TO A
21 PROPRIETARY AGREEMENT OR PROTECTIVE ORDER, UNREASONABLY DENYING A
22 REQUEST OF ANOTHER PROVIDER FOR INFORMATION REGARDING THE TECHNICAL
23 DESIGN AND FEATURES, GEOGRAPHIC COVERAGE, INFORMATION NECESSARY FOR
24 THE DESIGN OF EQUIPMENT, OR TRAFFIC CAPABILITIES OF THE LOCAL EXCHANGE
25 NETWORK;

26 (4) UNREASONABLY DELAYING ACCESS IN CONNECTING TO THE LOCAL
27 EXCHANGE NETWORK ANOTHER TELECOMMUNICATIONS CARRIER WHOSE PRODUCT
28 OR SERVICE REQUIRES NOVEL OR SPECIALIZED ACCESS;

29 (5) UNREASONABLY REFUSING OR DELAYING ACCESS BY ANY PERSON
30 TO ANOTHER TELECOMMUNICATIONS CARRIER;

31 (6) UNREASONABLY ACTING OR FAILING TO ACT SUCH THAT A
32 SUBSTANTIAL ADVERSE EFFECT ON THE ABILITY OF ANOTHER
33 TELECOMMUNICATIONS CARRIER TO PROVIDE SERVICE TO ITS CUSTOMERS
34 RESULTS;

35 (7) UNREASONABLY FAILING TO OFFER SERVICES TO CUSTOMERS IN A
36 LOCAL EXCHANGE, WHERE A TELECOMMUNICATIONS CARRIER IS CERTIFIED TO
37 PROVIDE SERVICE AND HAS ENTERED INTO AN INTERCONNECTION AGREEMENT FOR
38 THE PROVISION OF LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES, WITH THE

1 INTENT TO DELAY OR IMPEDE THE ABILITY OF THE INCUMBENT LOCAL EXCHANGE
2 TELECOMMUNICATIONS CARRIER TO PROVIDE INTER-LATA TELECOMMUNICATIONS
3 SERVICES;

4 (8) VIOLATING THE TERMS OF OR UNREASONABLY DELAYING
5 IMPLEMENTATION OR ENFORCEMENT OF AN INTERCONNECTION AGREEMENT
6 ENTERED INTO IN ACCORDANCE WITH § 252 OF THE FEDERAL
7 TELECOMMUNICATIONS ACT OF 1996 IN A MANNER THAT UNREASONABLY DELAYS,
8 INCREASES THE COST, OR IMPEDES THE AVAILABILITY OF TELECOMMUNICATIONS
9 SERVICES TO CONSUMERS;

10 (9) UNREASONABLY IMPEDING OR DELAYING A TELECOMMUNICATIONS
11 CARRIER'S ACCESS TO OR IMPLEMENTATION OF ITS RIGHTS UNDER THIS SUBTITLE
12 BY RESORTING IN BAD FAITH TO PROCESSES UNDER THE COMMISSION; AND

13 (10) UNREASONABLY FAILING TO OFFER NETWORK ELEMENTS THAT THE
14 COMMISSION OR THE FEDERAL COMMUNICATIONS COMMISSION HAS DETERMINED
15 MUST BE OFFERED ON AN UNBUNDLED BASIS TO ANOTHER TELECOMMUNICATIONS
16 CARRIER IN A MANNER CONSISTENT WITH THE COMMISSION'S OR FEDERAL
17 COMMUNICATIONS COMMISSION'S ORDER OR RULES REQUIRING THAT OFFER.

18 (C) IN CONSIDERING WHETHER A PARTICULAR ACTION IS A VIOLATION OF
19 THIS SECTION, THE COMMISSION MAY ESTABLISH, AS PROHIBITED, OTHER
20 ACTIVITIES NOT SPECIFICALLY LISTED IN SUBSECTION (B) OF THIS SECTION.

21 8-503.

22 (A) (1) A TELEPHONE COMPANY MAY NOT FAIL OR NEGLECT TO COMPLY
23 WITH THIS SUBTITLE OR WITH A REGULATION ADOPTED UNDER THIS SUBTITLE.

24 (2) (I) IN ADDITION TO ANY OTHER AVAILABLE PENALTY, THE
25 COMMISSION MAY ASSESS DIRECTLY, AFTER AN OPPORTUNITY FOR A HEARING, AN
26 ADMINISTRATIVE PENALTY NOT EXCEEDING 0.00825% OF THE COMPANY'S GROSS
27 INTRASTATE TELECOMMUNICATIONS REVENUE FOR A VIOLATION OF THIS
28 SUBTITLE.

29 (II) EACH DAY OF A CONTINUING VIOLATION AGAINST A PERSON IS
30 A SEPARATE VIOLATION.

31 (3) THE PERIOD FOR WHICH THE PENALTY SHALL BE ASSESSED SHALL
32 BEGIN ON THE DAY THE COMMISSION ORDER REQUIRES COMPLIANCE WITH THE
33 ORDER AND SHALL CONTINUE UNTIL THE ENTITY IS IN COMPLIANCE WITH THE
34 COMMISSION ORDER.

35 (B) (1) THE COMMISSION MAY WAIVE ANY PENALTY IMPOSED UNDER
36 SUBSECTION (A) OF THIS SECTION IF THE COMMISSION MAKES A WRITTEN FINDING
37 AS TO ITS REASONS FOR WAIVING THE PENALTY.

38 (2) REASONS FOR WAIVING A PENALTY MAY INCLUDE TECHNOLOGICAL
39 INFEASIBILITY AND ACTS OF GOD.

1 (C) THE COMMISSION SHALL ESTABLISH BY REGULATION PROCEDURES FOR
2 IMPOSING A PENALTY UNDER SUBSECTION (A) OF THIS SECTION THAT, AT A
3 MINIMUM, PROVIDE FOR NOTICE, HEARING, AND A WRITTEN ORDER RELATING TO
4 THE IMPOSITION OF THE PENALTY.

5 (D) IN ASSESSING AN ADMINISTRATIVE PENALTY UNDER THIS SECTION, THE
6 COMMISSION SHALL CONSIDER:

7 (1) THE NATURE, CIRCUMSTANCES, EXTENT, GRAVITY, AND NUMBER OF
8 VIOLATIONS;

9 (2) THE DEGREE OF CULPABILITY OF THE VIOLATOR;

10 (3) PRIOR OFFENSES AND REPEATED VIOLATIONS OF THE VIOLATOR;
11 AND

12 (4) ANY OTHER MATTER THAT THE COMMISSION CONSIDERS
13 APPROPRIATE AND RELEVANT.

14 8-504.

15 (A) THE COMMISSION MAY:

16 (1) RESOLVE AND ADJUDICATE DISPUTES BETWEEN
17 TELECOMMUNICATIONS CARRIERS BROUGHT UNDER THIS SUBTITLE; AND

18 (2) AWARD COMPENSATORY, CONSEQUENTIAL, AND PUNITIVE
19 DAMAGES REASONABLY CALCULATED TO MAINTAIN COMPLIANCE WITH THE
20 PURPOSES, OBJECTIVES, AND REQUIREMENTS OF THIS SUBTITLE.

21 (B) IF, AFTER NOTICE AND HEARING, THE COMMISSION FINDS THAT A
22 TELECOMMUNICATIONS CARRIER HAS VIOLATED THIS SUBTITLE, INCLUDING A
23 VIOLATION OF ANY TARIFF OFFERING OR REQUIREMENT THAT DAMAGES ANOTHER
24 TELECOMMUNICATIONS CARRIER, THE COMMISSION SHALL AWARD TO THE
25 PREVAILING PARTY:

26 (1) APPROPRIATE COMPENSATORY, CONSEQUENTIAL, OR PUNITIVE
27 DAMAGES, OR ANY COMBINATION OF THEM; AND

28 (2) ATTORNEY'S FEES AND COSTS.

29 (C) A TELECOMMUNICATIONS CARRIER THAT VIOLATES THIS SUBTITLE MAY
30 NOT PASS THROUGH ANY OF THE AMOUNTS PAID UNDER THIS SECTION, OR ANY
31 OTHER RELATED DEFENSE COSTS, TO ITS CUSTOMERS IN ANY MANNER, DIRECTLY
32 OR INDIRECTLY.

33 (D) (1) UNLESS STAYED BY THE COMMISSION OR A COURT OF COMPETENT
34 JURISDICTION, IF A TELECOMMUNICATIONS CARRIER THAT VIOLATES THIS
35 SUBTITLE FAILS TO PAY ANY AMOUNT ASSESSED UNDER THIS SECTION WITHIN THE
36 TIME PRESCRIBED IN THE COMMISSION'S ORDER, THE PREVAILING PARTY MAY

1 APPLY TO A COURT OF COMPETENT JURISDICTION FOR ENFORCEMENT OF THE
2 COMMISSION'S ORDER.

3 (2) IN ADDITION TO THE AMOUNTS AWARDED BY THE COMMISSION, THE
4 COURT SHALL FURTHER AWARD TO THE PREVAILING PARTY PUNITIVE DAMAGES
5 AND REASONABLE ATTORNEY'S FEES.

6 (3) IF THE COURT FINDS A REASONABLE BASIS FOR THE FAILURE OF
7 THE TELECOMMUNICATIONS CARRIER TO MAKE TIMELY PAYMENT ACCORDING TO
8 THE COMMISSION'S ORDER, THE COURT SHALL ESTABLISH A NEW DATE FOR
9 PAYMENT TO BE MADE.

10 (4) THE PREVAILING TELECOMMUNICATIONS CARRIER MAY ALSO
11 APPLY TO A COURT OF COMPETENT JURISDICTION FOR THE AWARD OF TEMPORARY,
12 PRELIMINARY, OR PERMANENT INJUNCTIVE RELIEF, OR ANY OTHER EQUITABLE
13 RELIEF AS NECESSARY TO EFFECTIVELY IMPLEMENT AND ENFORCE AN ORDER OF
14 THE COMMISSION UNDER THIS SUBTITLE IN A TIMELY MANNER.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2004.